

IN THE HIGH COURT OF JUDICATURE OF
ANDHRA PRADESH
AT HYDERABAD

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 3374 OF 2007

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Dated : October 12, 2007

Between:

The Deputy Commissioner of Prohibition & Excise,
Warangal and others

Petitioners

AND

T.Pandu

Respondent

THE HON'BLE MRS. JUSTICE T.MEENA KUMARI
AND
THE HON'BLE MR. JUSTICE G.CHANDRAIAH

WRIT PETITION NO. 3374 OF 2007

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ORAL ORDER:(per THE HON'BLE MRS. JUSTICE T.MEENA
KUMARI)

Seeking a writ of certiorari calling for the records

relating to order dated 26.09.2006 (*sic.* 29.09.2006) in O.A. No. 6158 of 2006 passed by the A.P. Administrative Tribunal, Hyderabad, and to quash the same being erroneous, illegal and unreasonable, the petitioners filed this writ petition.

The respondent herein filed the above O.A. assailing action of the petitioners in not considering his claim for promotion to the post of Prohibition and Excise Sub-Inspector from the feeder category of Head Constable while promoting several of his juniors on the ground that the respondent had not passed the requisite tests for promotion.

The respondent herein was initially appointed as Prohibition & Excise Constable on 1.2.1977 and promoted as Head Constable on 12.9.1984 and his next promotion is Prohibition and Excise Sub-Inspector, for which one has to passed Excise Department Tests A to D, Accounts Test for Executive Officers or Accounts Test for Subordinate Officers Part-I and II and Language Test in Telugu or Hindi or Urdu. The grievance of the respondent is that he has not been considered for promotion to the post of Prohibition & Excise Sub-Inspector on the ground that he has not passed the departmental tests required for such promotion under the Rules. The contention of the respondent before the Tribunal was that he has already crossed the age of 45 years, he should be given the benefit of G.O. Ms. No. 225 dated 18.5.1999 by giving

the relaxation from passing the test for promotion to any higher post. While, it was the contention of the learned Government Pleader for Services-II, before the Tribunal, that the respondent was once promoted from Constable to Head Constable and, therefore, the same benefit cannot be extended for the second time, under the said G.O.

The Tribunal, having regard to an interim order of this court made in WP No. 24912 of 2006 dated 22.02.2006, wherein it was held that the *ad hoc* rule framed under GO Ms. No. 225, no doubt, restricts the benefit to a limited class of seekers of promotion i.e., those who did not secure any promotion earlier in their service, but the language of the proviso to the said rule is construed by a Division Bench of this Court to mean that the exclusion of the benefit to the context of a second promotion is only in those cases, where the second promotion is to a post based on a process of selection but not purely on seniority, directed the petitioners herein to consider the case of respondent for promotion to the post of Sub-Inspector in the existing vacancies by giving relaxation in accordance with G.O. Ms. No. 225 dated 18.5.1999 and pass appropriate orders within a period of eight weeks.

Aggrieved thereby the petitioners filed the present writ petition contending that the post of Prohibition & Excise Sub-Inspector, which is vested with certain statutory functions, cannot be given to unqualified persons, inasmuch as the efficiency of the functioning of Department will be at stake. It is further contended

that the Tribunal below has erred in assuming that GO Ms. No. 225 dated 18.5.1999 would apply to only Selection Grade Post and not to the post of seniority.

Evidently, the writ petition is directed against the interim order dated 29.09.2006 directing the petitioners herein to consider the case of the respondent for promotion to the post of Sub-Inspector in the existing vacancies by giving relaxation in accordance with GO Ms. No. 225 dated 18.5.1999 and pass appropriate orders within a timeframe. The petitioners ought to have filed a vacate petition before the Tribunal urging the grounds that are urged in this writ petition. Therefore, without adverting to the merits or otherwise of the contentions raised before this court, we dismiss the writ petition with a liberty to the petitioners to move the Tribunal by way of Vacate Petition and raise all the grounds that are available to them under law.

The writ petition is accordingly dismissed at the stage of admission. There shall be no order as to costs.

T.MEENA KUMARI, J.

G.CHANDRAIAH, J.

October 12, 2007
MAS